



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-833

Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Positioning Adjustment Appliances, the Appliances Made Therefrom, and Methods of Making the Same

Commission Determination to Extend the Target Date for Completion of the Investigation; Schedule for Filing of Additional Written Submissions from the Parties and the Public

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the above-captioned investigation and to solicit additional briefing from the parties and the public.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on April 5, 2012, based upon a complaint filed on behalf of Align Technology, Inc., of San Jose, California (“Align”), on March 1, 2012, as corrected on March 22, 2012. 77 FR 20648 (April 5, 2012). The complaint alleged violations of Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 (“Section 337”) in the sale for importation, importation, or sale within the United States after importation of certain digital models, digital data, and treatment plans for use in making incremental dental appliances, the appliances made therefrom, and methods of making the same by reason of infringement of certain claims of U.S. Patent No. 6,217,325 (“the ‘325 patent”); U.S. Patent No. 6,471,511 (“the ‘511 patent”); U.S. Patent No. 6,626,666; U.S. Patent No. 6,705,863 (“the ‘863 patent”); U.S. Patent No. 6,722,880 (“the ‘880 patent”); U.S. Patent No. 7,134,874 (“the ‘874 patent”); and U.S. Patent No. 8,070,487 (the ‘487 patent”). The notice of institution named as respondents ClearCorrect Pakistan (Private), Ltd. of Lahore, Pakistan and ClearCorrect Operating, LLC of Houston, Texas (collectively, “the Respondents”).

On May 6, 2013, the administrative law judge issued the final ID, finding a violation of Section 337 with respect to the ‘325 patent, the ‘880 patent, the ‘487 patent, the ‘511 patent, ‘863 patent, and the ‘874 patent. The ALJ recommended the issuance of cease and desist orders.

On May 20, 2013, Align, the Respondents, and the Commission investigative attorney each filed a petition for review. On May 28, 2013, each of the parties filed a response thereto. On June 5, 2013, Align filed a statement on the public interest. On June 13, 2013, the Respondents filed a statement on the public interest.

On June 7, 2013, the Commission issued notice of its determination to extend the deadline for determining whether to review the final ID to July 25, 2013, and to extend the target date to September 24, 2013.

On July 25, 2013, the Commission issued notice of its determination to review the final ID in its entirety and to solicit briefing on the issues on review and on remedy, the public interest, and bonding. 78 FR 46611 (August 1, 2013). On August 8, 2013, each of the parties filed written submissions. On August 15, 2013, each filed reply submissions.

On September 24, 2013, the Commission issued notice of its determination to extend the target date to November 1, 2013.

On November 18, 2013, the Commission issued notice of its determination to extend the target date to January 17, 2014.

The Commission has determined to extend the target date for completion of the above-captioned investigation to March 21, 2014, and to solicit briefing as follows.

The Commission is interested in receiving public comment on the following question:

Question 1: Are electronic transmissions “articles” within the meaning of Section 337? Please answer with respect to the text, structure, and legislative history of Section 337. Also address any potentially relevant judicial precedent, such as *Bayer AG v. Housey Pharmaceuticals, Inc.*, 340 F.3d 1367, 1373-74 (Fed. Cir. 2003), and *Suprema, Inc. v. Int’l Trade Comm’n*, ___ F.3d ___, Nos. 2012–1170,–1026, –1124, 2013 WL 6510929 (Fed. Cir. December 13, 2013); Commission decisions, including *Certain Hardware Logic Emulation Systems and Components Thereof*, Inv. No. 337-TA-383 (1998); and any other potentially informative decisions by other government agencies.

In addition, the Commission is interested in public comment and also encourages submissions by the parties to the investigation, interested government agencies, the Office of Unfair Import Investigations, and any other interested persons on the following questions, with reference to the applicable law, and the existing evidentiary record:

Question 2: In analyzing whether the term “articles” encompasses electronic transmissions, should the Commission take into account whether the electronic transmission is of data that is directly representative of a physical article?

Question 3: Does the term “processed” in Section 337(a)(1)(B)(ii) include data processing by a computer?

Question 4: Does the term “a material” in the phrase “a material or apparatus for use in practicing a patented process” in 35 U.S.C. § 271(c) include electronic transmissions?

WRITTEN SUBMISSIONS: The written submissions must be filed no later than close of business on February 3, 2014. Reply submissions must be filed no later than the close of business on February 10, 2014. The written submissions must be no longer than 50 pages and the reply submissions must be no longer than 25 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f), which requires electronic filing. The original document and 8 true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment

during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Dated: January 17, 2014.